

ORIGINAL

OPEN MEETING



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MEMORANDUM

Arizona Corporation Commission

AZ CORP COMMISSION

DOCKET CONTROL

DOCKETED

TO: THE COMMISSION

JUN 21 2013

2013 JUN 21 PM 3 23

FROM: Utilities Division

DATE: June 21, 2013



RE: IN THE MATTER OF THE APPLICATION OF MCLEODUSA TELECOMMUNICATIONS SERVICES, L.L.C. FOR A WAIVER OF A.A.C. R14-2-803 OR, ALTERNATIVELY, FOR APPROVAL TO COMPLETE A *PRO FORMA* INTRA-CORPORATE TRANSACTION. (DOCKET NO. T-03267A-13-0124)

Introduction

On May 1, 2013, McLeodUSA Telecommunications Services, L.L.C. ("McLeod" or "Applicant") filed an Application with the Arizona Corporation Commission ("Commission") to request a waiver of the Arizona Administrative Code ("A.A.C.") R14-2-803 pursuant to A.A.C. R14-2-806 or, alternatively, expedited approval under A.A.C. R14-2-803, to the extent necessary, as well as any other applicable statutes or rules, to undertake a *pro forma* intra-corporate transaction (the "Transaction") which will insert a new holding company, Windstream Holdings, Inc. ("WHI") into the ownership chain above its current parent holding company, Windstream Corporation ("Windstream").

On May 22, 2013, the Applicant filed a waiver of the 30-day period set forth in A.A.C. R14-2-806.C.

Background

Windstream Corporation is a publicly traded Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212. Windstream's subsidiaries provide local and long distance telephone services, data hosting services, broadband and high-speed data services and video services to customers throughout the United States. Windstream's operations currently have approximately 3.4 million access lines and approximately \$6 billion in annual revenues.

Windstream does not directly provide telecommunications services or hold any telecommunications licenses. In Arizona, Windstream has four (4) regulated subsidiaries currently authorized to provide telecommunications services (the "Windstream Regulated Subsidiaries") as follows:

1. McLeodUSA Telecommunications Services, L.L.C. is authorized to provide resold interexchange services pursuant to a certificate granted by Decision No. 61001¹ on July 16, 1998 and is authorized to provide resold and facilities-based local exchange services pursuant to a certificate granted by Decision No. 62627² on June 9, 2000.
2. PAETEC Communications, Inc. ("PAETEC") is authorized to provide resold interexchange services pursuant to a certificate granted by Decision No. 62458³ on April 14, 2000.
3. Talk America, Inc. ("TAI") is authorized to provide resold interexchange services pursuant to a certificate granted by Decision No. 64084⁴ on October 4, 2001. This authorization was confirmed by Decision No. 71266,⁵ granted September 3, 2009, through which Talk America voluntarily relinquished authority to provide local exchange service.
4. Windstream Communications, Inc. ("WCI") is authorized to provide resold interexchange services pursuant to a certificate granted by Decision No. 68965⁶ on September 21, 2006.

The Proposed Transaction

The proposed *pro forma* Transaction will involve the insertion of a new holding corporation, WHI, into the ownership chain above Windstream, the current parent holding company of McLeod. The end result of the Transaction will be Windstream becomes a wholly owned subsidiary of WHI.

Staff Analysis and Conclusions

The Public Utility Holding Companies and Affiliated Interests Rules apply to all Class A investor-owned utilities (defined for telecommunications carriers as those that have Arizona jurisdictional annual revenues of more than \$1 million). Based on Staff's review of revenues reported in the 2012 Annual Reports on file with the Commission, McLeod is the only Windstream Regulated Subsidiary that generated more than \$1 million of Arizona jurisdictional revenue. Therefore, this Application is subject to A.A.C. R14-2-801 through 805 of the Public Utility Holding Companies and Affiliated Interests Rules. McLeod's application provided the information required by A.A.C. R14-2-803.A.1-11.

¹ Docket No. T-03267A-96-0515.

² Docket No. T-03267A-99-0705.

³ Docket No. T-03663A-98-0676.

⁴ Docket No. T-03342A-97-0129.

⁵ Docket No. T-03342A-07-0612.

⁶ Docket No. T-20436A-05-0909.

The proposed transaction is at the parent holding company level only, with the exception of the transfer of certain shared operations and corporate employees from WCI to Windstream which is discussed below. The Transaction will not affect employee headcount in the Windstream family of companies. In addition, the Applicant states the transaction will not result in any change in the ultimate ownership of the Windstream Regulated Subsidiaries; current Windstream shareholders will continue to hold the same level of indirect ownership in the Windstream Regulated Subsidiaries as they did prior to the transaction, albeit through a new holding company. The current officers and employees of Windstream Corporation will become the officers and employees of WHI; and WHI will be the sole holder of equity interests in Windstream.

There will be no change in actual working control of the Windstream Regulated Subsidiaries, no change in the membership of its board of directors or in the management of its operations, and no change in its capital structure. The proposed transaction will be transparent to customers of the Windstream Regulated Subsidiaries and will not result in any change to the rates, terms and conditions of customers' services. Likewise, the Applicant states the operations of the Windstream Regulated Subsidiaries will continue to be overseen by their existing management teams and will not be affected in any way by the Transaction. The Applicant further states these corporate structure changes will increase the overall company's efficiency and make it more attractive to potential creditors, which should improve its access to debt and equity capital.

In addition, the "shared" corporate operations and other service functions currently handled by Windstream on behalf of other Windstream Regulated Subsidiaries, such as shared service corporate employees (including accounting, treasury, finance, tax, regulatory, legal, human resources, and marketing support functions), shared contracting functions, centralized procurement, will be transferred and migrated from WCI to Windstream and as a result will be performed by the corporate parent of the operating companies. Only the shared corporate services will be assigned to Windstream; the telecommunications operations and licenses currently held by WCI, including those in Arizona, and the assets used to perform telecommunications services pursuant to those licenses, will remain with WCI following the *pro forma* Transaction.

On May 10, 2013, the Applicant filed an affidavit of publication verifying public notice of its proposed transaction with the Commission's Docket Control. The Company published notice of its application in the Arizona Republic on May 8, 2013.

The Consumer Services Section reports, from January 2010 through May 2013, a total of four (4)⁷ complaints against McLeod; a total of two (2)⁸ complaints against Windstream

⁷ In 2010 – one quality of service complaint, 2011 – two billing complaints, 2012 – one telecom issues complaint, and 2013 – zero complaints.

⁸ In 2010 and 2011 - zero complaints, 2012 – two complaints (one new service/quality of service and one repair issue/quality of service complaint), and 2013 – zero complaints

Communications, Inc. and no complaints against PAETEC Communications, Inc. and Talk America, Inc. All complaints have been resolved and closed. The Corporations Division of the Arizona Corporation Commission verified that all four companies are in Good Standing.

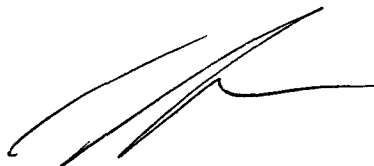
Staff concludes that the transaction would not impair the financial status of the Applicant, would not impair its ability to attract capital, nor would it impair the ability of the Applicants to provide safe, reasonable, and adequate service. Additionally, as the proposed transaction does not involve the merger of the Windstream Regulated Subsidiaries, Staff does not believe Arizona's competitive situation will be negatively impacted.

The Applicant has requested that the Commission waive the A.A.C. R14-2-803(A) requirement that the notice of intent be filed 120 days prior to completion of the Reorganization. If the application is approved at the July Open Meeting, the Notice of Intent will have been filed 78 days rather than 120 days in advance.

Staff's Recommendations

Staff recommends that the application filed by McLeodUSA Telecommunications Services, L.L.C. seeking approval to undertake a *pro forma* intra-corporate transaction to insert a new holding company, Windstream Holdings, Inc. into the ownership chain above its current parent holding company, Windstream Corporation, pursuant to A.A.C. R14-2-803, including the requested waiver of A.A.C. R14-2-803(A) 120 day notice requirement, be approved with the following condition:

That within thirty (30) days following close of the proposed transaction, McLeodUSA Telecommunications Services, L.L.C. inform the Commission by filing an affidavit with Docket Control that transaction-related activities are completed.



Steven M. Olea
Director
Utilities Division

SMO:LLM:sms\MAS

ORIGINATOR: Lori Morrison

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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
Chairman
GARY PIERCE
Commissioner
BRENDA BURNS
Commissioner
BOB BURNS
Commissioner
SUSAN BITTER SMITH
Commissioner

IN THE MATTER OF THE APPLICATION)
OF MCLEODUSA)
TELECOMMUNICATIONS SERVICES,)
L.L.C. FOR A WAIVER OF A.A.C. R14-2-)
803 OR, ALTERNATIVELY, FOR)
APPROVAL TO COMPLETE A *PRO*)
FORMA INTRA-CORPORATE)
TRANSACTION.)

DOCKET NO. T-03267A-13-0124
DECISION NO. _____
ORDER

Open Meeting
July 17 and 18, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On May 1, 2013, McLeodUSA Telecommunications Services, L.L.C. (“McLeod” or “Applicant”) filed an Application with the Arizona Corporation Commission (“Commission”) to request a waiver of the Arizona Administrative Code (“A.A.C.”) R14-2-803 pursuant to A.A.C. R14-2-806 or, alternatively, expedited approval under A.A.C. R14-2-803, to the extent necessary, as well as any other applicable statutes or rules, to undertake a *pro forma* intra-corporate transaction (the “Transaction”) which will insert a new holding company, Windstream Holdings, Inc. (“WHI”) into the ownership chain above its current parent holding company, Windstream Corporation (“Windstream”).

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...

2. On May 22, 2013, the Applicant filed a waiver of the 30-day period set forth in A.A.C. R14-2-806.C.

Background

3. Windstream Corporation is a publicly traded Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212. Windstream's subsidiaries provide local and long distance telephone services, data hosting services, broadband and high-speed data services and video services to customers throughout the United States. Windstream's operations currently have approximately 3.4 million access lines and approximately \$6 billion in annual revenues.

4. Windstream does not directly provide telecommunications services or hold any telecommunications licenses. In Arizona, Windstream has four (4) regulated subsidiaries currently authorized to provide telecommunications services (the "Windstream Regulated Subsidiaries") as follows:

a) McLeodUSA Telecommunications Services, L.L.C. is authorized to provide resold interexchange services pursuant to a certificate granted by Decision No. 61001¹ on July 16, 1998 and is authorized to provide resold and facilities-based local exchange services pursuant to a certificate granted by Decision No. 62627² on June 9, 2000.

b) PAETEC Communications, Inc. ("PAETEC") is authorized to provide resold interexchange services pursuant to a certificate granted by Decision No. 62458³ on April 14, 2000.

c) Talk America, Inc. ("TAP") is authorized to provide resold interexchange services pursuant to a certificate granted by Decision No. 64084⁴ on October 4, 2001. This authorization was confirmed by Decision No. 71266,⁵ granted September 3, 2009, through which Talk America voluntarily relinquished authority to provide local

¹ Docket No. T-03267A-96-0515.

² Docket No. T-03267A-99-0705.

³ Docket No. T-03663A-98-0676.

⁴ Docket No. T-03342A-97-0129.

⁵ Docket No. T-03342A-07-0612.

1 exchange service.

2 d) Windstream Communications, Inc. ("WCI") is authorized to provide resold
3 interexchange services pursuant to a certificate granted by Decision No. 68965⁶ on
4 September 21, 2006.

5 **The Proposed Transaction**

6 5. The proposed *pro forma* Transaction will involve the insertion of a new holding
7 corporation, WHL, into the ownership chain above Windstream, the current parent holding
8 company of McLeod. The end result of the Transaction will be Windstream becomes a wholly
9 owned subsidiary of WHL.

10 **Staff Analysis and Conclusions**

11 6. The Public Utility Holding Companies and Affiliated Interests Rules apply to all
12 Class A – investor-owned utilities (defined for telecommunications carriers as those that have
13 Arizona jurisdictional annual revenues of more than \$1 million). Based on Staff's review of
14 revenues reported in the 2012 Annual Reports on file with the Commission, McLeod is the only
15 Windstream Regulated Subsidiary that generated more than \$1 million of Arizona jurisdictional
16 revenue. Therefore, this Application is subject to A.A.C. R14-2-801 through 805 of the Public
17 Utility Holding Companies and Affiliated Interests Rules. McLeod's application provided the
18 information required by A.A.C. R14-2-803.A.1-11.

19 7. The proposed transaction is at the parent holding company level only, with the
20 exception of the transfer of certain shared operations and corporate employees from WCI to
21 Windstream which is discussed below. The Transaction will not affect employee headcount in the
22 Windstream family of companies. In addition, the Applicant states the transaction will not result
23 in any change in the ultimate ownership of the Windstream Regulated Subsidiaries; current
24 Windstream shareholders will continue to hold the same level of indirect ownership in the
25 Windstream Regulated Subsidiaries as they did prior to the transaction, albeit through a new
26 ...

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28 ⁶ Docket No. T-20436A-05-0909.

1 holding company. The current officers and employees of Windstream Corporation will become
2 the officers and employees of WHI; and WHI will be the sole holder of equity interests in
3 Windstream. There will be no change in actual working control of the Windstream Regulated
4 Subsidiaries, no change in the membership of its board of directors or in the management of its
5 operations, and no change in its capital structure. The proposed transaction will be transparent to
6 customers of the Windstream Regulated Subsidiaries and will not result in any change to the rates,
7 terms and conditions of customers' services. Likewise, the Applicant states the operations of the
8 Windstream Regulated Subsidiaries will continue to be overseen by their existing management
9 teams and will not be affected in any way by the Transaction. The Applicant further states these
10 corporate structure changes will increase the overall company's efficiency and make it more
11 attractive to potential creditors, which should improve its access to debt and equity capital.

12 8. In addition, the "shared" corporate operations and other service functions currently
13 handled by Windstream on behalf of other Windstream Regulated Subsidiaries, such as shared
14 service corporate employees (including accounting, treasury, finance, tax, regulatory, legal, human
15 resources, and marketing support functions), shared contracting functions, centralized
16 procurement, will be transferred and migrated from WCI to Windstream and as a result will be
17 performed by the corporate parent of the operating companies. Only the shared corporate services
18 will be assigned to Windstream; the telecommunications operations and licenses currently held by
19 WCI, including those in Arizona, and the assets used to perform telecommunications services
20 pursuant to those licenses, will remain with WCI following the *pro forma* Transaction.

21 9. On May 10, 2013, the Applicant filed an affidavit of publication verifying public
22 notice of its proposed transaction with the Commission's Docket Control. The Company
23 published notice of its application in the Arizona Republic on May 8, 2013.

24 10. The Consumer Services Section reports, from January 2010 through May 2013, a
25 total of four (4)⁷ complaints against McLeod; a total of two (2)⁸ complaints against Windstream
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28 ⁷ In 2010 – one quality of service complaint, 2011 – two billing complaints, 2012 – one telecom issues complaint, and
2013 – zero complaints.

1 Communications, Inc. and no complaints against PAETEC Communications, Inc. and Talk
2 America, Inc. All complaints have been resolved and closed. The Corporations Division of the
3 Arizona Corporation Commission verified that all four companies are in Good Standing.

4 11. Staff concludes that the transaction would not impair the financial status of the
5 Applicant, would not impair its ability to attract capital, nor would it impair the ability of the
6 Applicants to provide safe, reasonable, and adequate service. Additionally, as the proposed
7 transaction does not involve the merger of the Windstream Regulated Subsidiaries, Staff does not
8 believe Arizona's competitive situation will be negatively impacted.

9 12. The Applicant has requested that the Commission waive the A.A.C. R14-2-803(A)
10 requirement that the notice of intent be filed 120 days prior to completion of the Reorganization.
11 If the application is approved at the July Open Meeting, the Notice of Intent will have been filed
12 78 days rather than 120 days in advance.

13 **Staff Recommendations**

14 13. Staff recommends that the application filed by McLeodUSA Telecommunications
15 Services, L.L.C. seeking approval to undertake a *pro forma* intra-corporate transaction to insert a
16 new holding company, Windstream Holdings, Inc. into the ownership chain above its current
17 parent holding company, Windstream Corporation, pursuant to A.A.C. R14-2-803, including the
18 requested waiver of A.A.C. R14-2-803(A) 120 day notice requirement, be approved with the
19 following conditions:

20 Staff further recommends that approval be conditioned on the following:

21 That within thirty (30) days following close of the proposed transaction,
22 McLeodUSA Telecommunications Services, L.L.C. inform the
23 Commission by filing an affidavit with Docket Control that transaction-
24 related activities are completed.

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28 ⁸ In 2010 and 2011 - zero complaints, 2012 - two complaints (one new service/quality of service and one repair issue/quality of service complaint), and 2013 - zero complaints

CONCLUSIONS OF LAW

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2 1. McLeodUSA Telecommunications Services, L.L.C. is a public service corporation
3 within the meaning of Article XV of the Arizona Constitution.

4 2. The Commission has jurisdiction over McLeodUSA Telecommunications Services,
5 L.L.C. and the subject matter in this filing.

6 3. The Commission, having reviewed the filing and Staff's Memorandum dated June
7 21, 2013, concludes that it is in the public interest to grant approval as proposed and discussed
8 herein.

ORDER

9
10 IT IS THEREFORE ORDERED that the application of McLeodUSA Telecommunications
11 Services, L.L.C. seeking approval to undertake a *pro forma* intra-corporate transaction described
12 herein, and the requested waiver of A.A.C. R14-2-803(A) 120 day notice requirement, be and
13 hereby are approved.

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1 IT IS FURTHER ORDERED that McLeodUSA Telecommunications Services, L.L.C. be
2 authorized to engage in any transactions and to execute any documents necessary to effectuate the
3 authorizations granted.

4 IT IS FURTHER ORDERED that within thirty (30) days following close of the proposed
5 transaction, McLeodUSA Telecommunications Services, L.L.C. inform the Commission by filing
6 an affidavit with Docket Control that transaction-related activities are completed.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8
9 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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12 CHAIRMAN

COMMISSIONER

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14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15
16 IN WITNESS WHEREOF, I, JODI JERICH, Executive
17 Director of the Arizona Corporation Commission, have
18 hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2013.

19
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21 _____
JODI JERICH
22 EXECUTIVE DIRECTOR

23 DISSENT: _____

24
25 DISSENT: _____

26 SMO:LLM:sms\MAS
27
28

SERVICE LIST FOR:
DOCKET NO. T-03267A-13-0124

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